

## ADMINISTRATIVE REPORT



**TO:** Planning & Development Committee

**FROM:** J. Zaffino, Chief Administrative Officer

**DATE:** April 4, 2024

**RE:** Regulating the creation of new private utilities (X2023.011-ZONE)

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### **Administrative Recommendation:**

**THAT the following amendment bylaws to regulate the creation of new private utilities proceed to consideration of first reading at a forthcoming Board meeting:**

- **Official Community Plan Amendment Bylaw No. 3045;**
  - **Zoning Amendment Bylaw No. 3046;**
  - **Subdivision Servicing and Development Bylaw No. 2900.01; and**
  - **Development Procedures Amendment Bylaw No. 2500.34.**
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### **Purpose:**

To seek direction related to proposed amendments contemplating the regulation of private water and sewer utilities.

### **Background:**

Under Section 3A-3 of the South Okanagan Sub-Regional Growth Strategy Bylaw No. 2770, 2017, the Regional District has committed to “encourage publically operated utilities and discourage the establishment of private utilities and services.”

In support of this, various official community plans (OCP) include an objective to “discourage the development of private systems for the provision of water and sewer services” based on an understanding that essential services should be operated by a local government.

Despite these policy directions, under the Regional District’s Subdivision Servicing Bylaw No. 2000, 2002, the definitions of “community sewer system” and “community water system” both make allowances for private utilities such as a strata corporation or an incorporated company.

### Statutory Authority:

Under Section 479 (Zoning bylaws) of the *Local Government Act*, a bylaw may make different provisions for, amongst other things, “different standards of works and services provided”.

Under Section 306 (Special drainage and sewerage authority) of the Act, a regional district may, by bylaw, “regulate and prohibit the design and installation of drainage and sewerage works provided by persons other than the regional district ...”

Under Section 335(2) of the Act, a regional district may, by bylaw, “regulate and prohibit in relation to a regional district service other than a regulatory service.”

### Other Considerations:

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At its meeting of May 5, 2022, the Planning and Development (P&D) Committee of the Regional District Board resolved “that a review of Low Density Residential Zones and servicing requirements in Kaleden be considered for inclusion on the Regional District’s 2023 Business Plan.”

The request for this project was prompted by community concern in Kaleden following the submission of four (4) subdivision applications that proposed to create individual “community sewer systems” to be owned and operated by the strata.

At present, the initiation of a Kaleden Zone Review is dependent upon the completion of other Board priority projects, such as the RGS Review, Electoral Area “E” OCP Review, ESDP Review, Subdivision Servicing Bylaw Review, Vacation Rental Review and Housing Options.

In August of 2023, the Okanagan Basin Water Board (OBWB) advised the Regional District that it was deemed to be in contravention of the “1.0 ha Policy” for reasons related to policies and regulations in its land use bylaws that speak to private utilities (see above). OBWB was subsequently requested to provide a formal statement on this and has recently provided the following:

*The current OBWB 1.0 Hectare policy does not address private utilities. This policy is under review and will address this issue in the near future. Most local government is the Okanagan define “Community Sewer” as those systems owned, operated and maintained by the local governments. We recommend that local governments do not authorize new private wastewater systems. If they are authorized, we recommend that the local government require security from the utility to ensure maintenance and replacement of the system to protect community water.*

#### Board Consideration:

At its meeting of October 19, 2023, the Regional District’s Planning and Development Committee considered a discussion paper with options to regulate the creation of new private utility systems and moved to initiate the proposed amendments.

The discussion paper considered at this meeting proposed to notify the proposed amendments in the typical manner for an Official Community Plan amendment (i.e. agency referrals, notification on VoyentAlert and social media, creation of a project webpage, etc.) as well as:

- an additional public information meeting with local engineering firms; and
- direct written notification to subdivision applicants whose current proposal may be impacted by such a change.

The discussion paper also proposed to present the results of this engagement process, along with draft amendment bylaws, at a forthcoming meeting of the P&D Committee, likely in Q1 of 2024.

#### **Referrals:**

Pursuant to Section 476 of the *Local Government Act*, the Regional District must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, School District No. 53, 58 and 67 have been made aware of the proposed amendment bylaw.

Pursuant to Section 475 of the *Local Government Act*, the Regional District must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural

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land. Both the ALC and the Ministry of Agriculture have been made aware of the proposed amendment bylaws.

While the proposed amendments do not contemplate the regulation of utility systems owned and operated by irrigation or improvement districts, referrals were sent to these organizations at the request of the RDOS Board.

**Public Process:**

On December 20, 2023, letters were mailed to six (6) property owners with in-stream proposals that *may* be affected by the proposed amendments.

On January 2, 2024, the holding of a Public Information Meeting (PIM) was notified via VoyentAlert, social media, and the project webpage.

On January 16, 2024, a Public Information Meeting (PIM) was held electronically via Webex and was attended by approximately 17 members of the public.

On January 24, 2024, a Public Information Meeting (PIM) with representatives of various local consulting engineering firms was held at 101 Martin Street, Penticton (RDOS Boardroom) and was attended by approximately 8 individuals.

Advertisements were placed in the following editions of local newspapers: Times Chronicle (January 25<sup>th</sup>), Penticton Western (January 24<sup>th</sup>), Summerland Review (January 25<sup>th</sup>), Keremeos Review (January 25<sup>th</sup>), Similkameen Spotlight (January 25<sup>th</sup>).

All comments received to date in relation to this application are included as a separate item on the Committee Agenda.

**Analysis:**

It is a standing policy of the Regional District Board that “essential services are best provided by government, where citizens can elect representatives interested in their well-being and will operate the service in the most effective and efficient manner possible.”

Further, “potable water and sanitary sewerage systems are determined to be essential to a high quality of life ...” yet, many of the private water and sewer systems within the Regional District struggle “to meet environmental and public health standards ... and do not meet increasing minimum provincial regulation or standard municipal design.”

It has been the Regional District’s experience that “system owners often find that they no longer have the financial ability, technical expertise or interest required to meet current regulation” and there have been prominent examples (e.g. Vintage Views Development Sewer System) where the Regional District has been requested to acquire these systems.

By the time a private or non-profit utility approaches the Regional District to acquire a water or waste water system, the infrastructure is often undersized, in disrepair or in contravention of provincial standards.

For these reasons, there is seen to be a strong argument to regulate, going forward, in favour of publicly operated utility systems versus those operated by business or strata corporations or other private water or sewer utilities.

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Such a regulation would further support various Board strategic land use objectives such as extending the provision of Regional District community water and community sewer services within the Okanagan Falls “Primary Growth Area”, or forestalling the creation of private sewer systems within the Naramata “Rural Growth Area” while the Liquid Waste Management Plan (LWMP) process remains on-going.

#### Utility Acquisition Considerations

While a prohibition on new private utilities *may* create pressure on the Regional District to support and immediately acquire such infrastructure when it is a requirement for development to proceed in a certain zone, this could be addressed through the creation of new policies.

Specifically, that newly constructed water or sewer infrastructure be financially sustainable upon completion (i.e. viable and affordable for residents to be served by the system) as a minimum consideration before the Regional District assumes ownership.

By way of comparison, the Columbia Shuswap and Thompson Nicola Regional District’s employ thresholds to help determine the viability of a utility (e.g. it must serve a minimum of 50 or 100 units).

The Board may wish to give consideration to amending its Water and Sewer Utility Acquisition Policy to include a reference to only acquiring proposed new utilities that have been designed to applicable RDOS regulations and, where RDOS regulations are silent, to good engineering practices.

#### Board Consideration of Private Utilities

Under the *Local Government Act*, a property owner is entitled to submit a development variance permit (DVP) applications requesting the Board to vary, amongst other things, a zoning or subdivision bylaw regulation, and the Board is obligated to consider every such application.

Accordingly, a “prohibition” on private utilities implemented through the zoning and subdivision bylaws is not seen to be absolute, and can be reviewed on a case-by-case basis *should* a property owner submit a DVP application seeking Board approval to undertake a private utility.

In recognition of this, it is being proposed that amendments to the Regional District’s Development Procedures Bylaw be undertaken in order to require or applicants proposing a new private utility system submit a report from a qualified professional engineer.

In general terms, the engineer’s report would be required to certify that the system meets or is equivalent to the standards prescribed by the Regional District’s Subdivision and Development Servicing Bylaw, is in acceptable condition, and is adequate for the proposed development.

#### Public Engagement:

Administration notes that the majority of responses received in relation to the proposed amendments were from external referral agencies and indicated that their interests are unaffected by the amendments.

With regard to non-agency responses, Administration notes that several representations opposing the proposed amendments have been received.

In general, these representations have raised concerns related to the increased cost of development, increased costs and delays for existing private utility system users, and increased uncertainty for in-stream development proposals.

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In response, Administration maintains its position that there are strong arguments in favour of regulating private water and sewer utilities (outlined above) and that options will exist for proponents to appeal to the Board to grant exceptions in the form of a development variance permit (DVP).

In the context of a development which requires the creation of a private utility, which can potentially cost tens of thousands of dollars and take years to complete, the cost and timeframe for a decision on a DVP application are seen to be minor (e.g. \$400 application fee and 6-8 week processing timeframe).

With regard to the concerns raised regarding in-stream development proposals and the perceived uncertainty associated with obtaining a discretionary approval from the Board (i.e. DVP applications), it is difficult for Administration to comment on this as any Board decision on such a proposal will be based on its merits and consistency with existing Board policies.

By way of example, Administration notes that a majority of these concerns relate to lands within Naramata that are currently the subject of a Liquid Waste Management Plan (LWMP) process, the outcomes of which are not yet known. Allowing private utility systems to proceed at this time may be at counter-purposes to the eventual recommendations of the LWMP.

In the interim, Administration believes that consideration of private utility system proposals through the submission of development variance permit applications to be appropriate. In addition, the proposed amendments only regulate the creation of new private utility systems and do not apply to existing private utility systems.

Pending the LWMP process, the Board could elect to approve any future development variance permit applications that are brought forward for its consideration and that it considers to have merit.

#### Alternative

Should the Board elect not to proceed with the proposed amendment bylaws, it is recommended that consultation be initiated with the member municipalities regarding an amendment to the Regional Growth Strategy (RGS) Bylaw in order to revise Policy No. 3A-3, which currently states:

*Encourage publically operated utilities and discourage the establishment of private utilities and services.*

Depending on the outcome of these discussions, it is anticipated that supporting amendments to the various Electoral Area OCP Bylaws will also be required in order to remove current policies discouraging private utility systems.

Conversely, the status quo is also an option, however this approach is not preferred as retaining RGS & OCP policies discouraging private utilities would be misleading and not representative of the Board's position on this matter if the proposed amendment bylaws are abandoned.

Moreover, discouraging private utilities will be an ineffective policy in the absence of other, supportive regulations in the Regional District's land use bylaws.

#### Summary

For the reasons outlined above, Administration is recommending that the consultation undertaken on the proposed amendments be deemed sufficient and that the proposed bylaw amendments be brought forward for consideration of first reading.

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**Alternatives:**

1. THAT Amendment Bylaw Nos. 3045, 3046, 2900.01 and 2500.34 be abandoned; and  
THAT an amendment to the South Okanagan Sub-Regional Growth Strategy (RGS) and Electoral Area Official Community Plan bylaws to remove policies that discourage private utilities be initiated.
2. Status quo.

**Respectfully submitted:**

Ben Kent

Ben Kent, Planner II

**Endorsed By:**

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C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Agency Referral List

No. 2 – Official Community Plan (OCP) Bylaw Policies

No. 3 – Zoning Bylaw Definitions & Regulations

No. 4 – Subdivision Servicing Bylaw Definitions & Regulations

No. 5 – Development Procedures Bylaw Regulations

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies, as highlighted with a , regarding Amendment Bylaw No. 3045, 2024, Amendment Bylaw No. 3046, Amendment Bylaw No. 2000.18 and Amendment Bylaw No. 2500.33:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input checked="" type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input checked="" type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input checked="" type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input checked="" type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Lands, Water and Resource Stewardship	<input checked="" type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input checked="" type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input checked="" type="checkbox"/>	ONA / PIB / OIB / USIB / LSIB (via NationsConnect)
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Canadian Wildlife Services
<input checked="" type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input checked="" type="checkbox"/>	OK Falls Irrigation District
<input checked="" type="checkbox"/>	School District #58 (Area H)	<input checked="" type="checkbox"/>	Kaleden Irrigation District
<input checked="" type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input checked="" type="checkbox"/>	Vaseux Lake Irrigation District
<input checked="" type="checkbox"/>	Keremeos Irrigation District	<input checked="" type="checkbox"/>	RDOS Irrigation Districts and improvement Districts
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Kootenay Boundary Regional District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Fraser Valley Regional District
<input checked="" type="checkbox"/>	Volunteer Fire Departments	<input checked="" type="checkbox"/>	Apex Mountain Resort

Attachment No. 2 – Official Community Plan (OCP) Bylaw Policies

CURRENT	PROPOSED
The Regional Board: Strongly discourages the creation of new private community water utilities.	The Regional Board: Does not support the creation of new private community water utilities, including those owned and operated by strata corporations.
[Not applicable]	Does not support the creation of new private community sewer utilities, including those owned and operated by a strata corporation, utility or corporation (Private or Public).

Attachment No. 3 – Zoning Bylaw Definitions & Regulations

CURRENT	PROPOSED
[Not applicable]	<b>“community sewer system”</b> means a system of works owned operated and maintained by the <i>Regional District</i> or an improvement district and which is established and operated under applicable provincial legislation for the collection, treatment and disposal of sanitary sewage and which serves more than one <i>parcel</i> , but excludes such system of works owned and operated by a strata corporation, utility or corporation (Private or Public).
[Not applicable]	<b>“community water system”</b> means a water supply system owned, operated and maintained by the <i>Regional District</i> or an irrigation district, but excludes a water supply system owned, operated and maintained by a water utility or strata corporation
Section 8.1.3 If a provision in this Bylaw establishes a minimum parcel size of less than 1.0 ha for a new parcel to be created by subdivision, that minimum parcel size only applies to a new parcel that will be connected to community water and sewer systems.	Section 8.1.3 If a provision in this Bylaw establishes a minimum parcel size of less than 1.0 ha for a new parcel to be created by subdivision: <ul style="list-style-type: none"> <li>a) that minimum parcel size only applies to a new parcel that will be connected to community water and sewer systems; and</li> <li>b) in all other circumstances the minimum parcel size for a new parcel to be created by subdivision is the 1.0 ha or greater minimum parcel size established by this Bylaw for the zone in which the parcel would be located.</li> </ul>



Attachment No. 4 - Subdivision Servicing Bylaw Definitions & Regulations

CURRENT	PROPOSED
<p><b>“community water system”</b> means a system of waterworks, within the meaning of the "Health Act", which is owned, operated and maintained by the Regional District, an Improvement District, Irrigation District, or Utility operating under the Jurisdiction of the Ministry of Environment Lands &amp; Parks as well as a water works system operated and maintained by a Strata Corporation.</p>	<p><b>“community sewer system”</b> means a system of works owned operated and maintained by the <i>Regional District</i> or an improvement district and which is established and operated under applicable provincial legislation for the collection, treatment and disposal of sanitary sewage and which serves more than one <i>parcel</i>, but excludes such system of works owned and operated by a strata corporation, utility or corporation (Private or Public)</p>
<p><b>“community sewer system”</b> means a system of sewage collection, treatment and disposal where:</p> <ul style="list-style-type: none"> <li>a) it is approved under <i>Municipal Sewage Regulation</i> (B.C. Reg. 129/99), the system serves more than one parcel and the system is owned, operated and maintained by a provincial or local government or improvement district as defined by the <i>Local Government Act</i>, or a strata corporation, as defined by the <i>Strata Property Act</i>, or an incorporated company; and</li> <li>b) which is established and operated under the <i>Health Act</i> and regulations or <i>Environmental Management Act</i>; and</li> <li>a) c) be acceptable under regulations or other provincial legislation that may apply.</li> </ul>	<p><b>“community water system”</b> means a water supply system owned, operated and maintained by the <i>Regional District</i> or an irrigation district, but excludes a water supply system owned, operated and maintained by a water utility or strata corporation.</p>
<p>Section 3.1.3(b) where it is proposed to connect to an existing community water system, the following shall be submitted to the Regional District:</p> <ul style="list-style-type: none"> <li>b) a current Certificate of Public Convenience and Necessity (CPCN) where the community water system is operated by a private utility.</li> </ul>	<p>Section 3.1.3(b) where it is proposed to connect to an existing community water system, the following shall be submitted to the Regional District:</p> <ul style="list-style-type: none"> <li>b) <i>deleted</i>.</li> </ul>

Attachment No. 5 – Development Procedures Bylaw Regulations

CURRENT	PROPOSED
<p>Schedule 2, Section 1.7</p> <p>a) Where an application proposes to vary a servicing requirement specified under the Subdivision Servicing Bylaw, the application shall be accompanied by an assessment report from a qualified professional engineer outlining:</p> <ul style="list-style-type: none"> <li>(i) Any alternative works proposed;</li> <li>(ii) Any detrimental impacts which may arise if the proposed variance is granted; and</li> <li>(iii) Any mitigation works or measures proposed to be provided.</li> </ul>	<p>Schedule 2, Section 1.7</p> <p>a) Where an application proposes to vary a zoning bylaw in order to permit subdivision approval or the issuance of a building permit where a proposed water system or sewer system does not comply with the bylaw’s definition of ‘community water system’ or ‘community sewer system’, the application shall be accompanied by a report from a qualified professional engineer that includes:</p> <ul style="list-style-type: none"> <li>(i) drawings of the existing or proposed system prepared to the standards set out in Schedule ‘A’ to Regional District of Okanagan-Similkameen’s Subdivision and Development Servicing Bylaw No. 2900, 2024, or any successor bylaw, including digital versions of such drawings;</li> <li>(ii) the engineer’s certification that the system was designed and constructed to standards equivalent to or exceeding the standards for such works prescribed by the Regional District of Okanagan-Similkameen Subdivision and Development Servicing Bylaw No. 2900, 2024, or any successor bylaw, or alternatively to the applicable standards in the current edition of the Master Municipal Standard Specifications and Standard Detail Drawings published by the Master Municipal Construction Documents Association, and in the event of any deficiencies an opinion on whether the deficiency can from a technical perspective be corrected by the applicant;</li> <li>(iii) the engineer’s assessment of the current condition of any existing works, including an opinion on whether the works appear to have been operated and maintained since construction in accordance with generally accepted utility operation and maintenance standards, and in the event of any deficiencies, an opinion on whether the deficiency can be corrected by means of future operation and maintenance practices; and</li> <li>(iv) the engineer’s certification that the system has the capacity to support the entire development in respect of which the application is being made without diminishing the level or quality of service that the system provides to existing development.</li> </ul>